

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

UNITED MINE WORKERS
OF AMERICA, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 5:04-00154
APPEAL NO. 06-1685

BANNER COAL & LAND
COMPANY,

Defendant.

MEMORANDUM OPINION STATING COURT'S INCLINATION TO GRANT MOTION

Pending before the court is the Joint Motion to Modify Default Judgment. (Doc. No 32.) Both parties request that this court reduce the default judgment it entered on February 24, 2005, from \$11,003,577.07 to 7,497,024.00. (Doc. No. 33 at 1.)

Because this civil action is on appeal (Doc. No. 28), and therefore beyond the reach of the court's limited jurisdiction, the court has only two options: it can either deny the joint motion in aid of the appeal, or, if it is inclined to grant the motion, issue a short memorandum so stating. Fobian v. Storage Tech. Corp., 164 F.3d 887, 891 (4th Cir. 1999). If a district court issues such a memorandum, the circuit court may then grant a limited remand so that the district court may act on its inclination. See Penn Virginia Oil & Gas Corp. v. CNX Gas Co., LLC, No. 1:09-cv-000090, 2007 WL 2060787 *1 (W.D. Va. Jul. 12, 2007).

In the instant case, both parties and the expert this court relied on to calculate the amount of the default judgment now agree that the default judgment overstates the present value of the liability. (Doc. No. 33 at 3.) Accordingly, the court is inclined to grant the joint motion under the equitable powers granted it by Rule 60(b)(6) of the Federal Rules of Civil Procedure. Reid v. Angelone, 369 F.3d 363, 374 (4th Cir. 2004) ("[Rule 60(b)(6)] provides the court with a grand reservoir of equitable power to do justice in a particular case.").

The parties' joint motion remains pending, while the Fourth Circuit considers the issue of limited remand.

The Clerk is directed to send a copy of this Memorandum Opinion to all counsel of record and the United States Court of Appeals for the Fourth Circuit.

It is **SO ORDERED** this 29th day of January, 2008.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
United States District Judge